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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

In re MARTIN P., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent.

v.

MARTIN P.,

Defendant and Appellant.

A095785

(Solano County
Super. Ct. No. J31862)

Martin P. appeals from the juvenile court's findings that he committed residential burglary, misdemeanor trespass and petty theft. He contends the findings are not supported by sufficient evidence. We affirm.

Factual and Procedural Background

Deborah A. shared a house with her 11-year-old son, Justin. This case involves incidents alleged to have happened between Wednesday, April 25, and Monday, April 30, 2001. Unbeknownst to Ms. A., on Wednesday Justin absented himself from school and spent the day at his home with appellant and a third boy, Jonathan. Justin testified they gained entry by kicking in a door leading to the home from an attached garage. The boys ate, played video games and watched television. On Thursday, the 26th, Ms. A. returned

from work and called the police after she discovered that jewelry and money were missing. On Friday, the 27th, Ms. A. again went to work. A friend of Ms. A.'s went by the home during school hours and found Justin, appellant and Jonathan inside. Appellant left the home when the friend told him to do so. Ms. A. had never given appellant permission to enter her home, and Justin denied telling appellant "that if he was going to cut school he could hang out in [Justin's] house."

On Monday, April 30, Justin went to school. Appellant and another boy named Steven climbed over the rear fence into Ms. A.'s yard. After appellant unsuccessfully tried to pick the lock, the boys forced their way through the back door, using a screwdriver Steven found in the back yard. A handyman Ms. A. had hired to change the lock and replace the back door, discovered appellant and Steven playing video games in Justin's bedroom. In the room the handyman noticed two backpacks, which were later found to contain personal property belonging to Ms. A. and her son. Appellant gave the handyman conflicting information about how he had gotten into the home, claiming first that Justin had let him in, but later admitting he had entered through the back door. The handyman called Ms. A., who summoned the police.

After the responding police officer advised appellant of his *Miranda*¹ rights, he told the officer how he and Steven had entered Ms. A.'s home, and admitted taking Pokemon cards and other things. The cards and some loose change were found in his pocket. Appellant claimed he was just going to borrow the backpack and the items in it, and planned to return them to Justin.² Appellant did not tell the officer that Justin had given him permission to be in the home that day.

Appellant also told the officer that he and Steven had taken other property from Ms. A.'s home the previous Thursday. They had found necklaces, rings, a watch, and approximately 26 gold dollars, which they put in Steven's backpack, and hid in a bush after leaving the home. They also split between them money they found in a wallet.

¹ *Miranda v. Arizona* (1966) 384 U.S. 436.

² Inside the backpack were a DVD movie, a CD holder, and some snack foods.

A supplemental petition alleged appellant had burglarized Ms. A.'s home on both April 26 and April 30. Appellant testified he could not remember the dates of two occasions when he had entered the home with Justin and Jonathan, although he recalled being found there by Ms. A.'s friend the second time. He also admitted using a screwdriver to enter through the back door with Steven on Monday, April 30. He claimed, however, that he was "[j]ust thinking about hanging out and waiting for Justin." He testified that he played games and ate a burrito, while Steven started searching the house. He also admitted taking things that didn't belong to him, about an hour after he and Steven had gained entry. Appellant denied taking property from the house at other times he had been there, but did remember some coins were taken which he agreed to split. On cross-examination, appellant testified he thought he had Justin's permission to break into the house, but not to take his things. He testified he had told the officer the truth, but did not remember telling him he had been in the house on Thursday, although he later recalled recovering the hidden backpack from the bushes. In answer to the court's questions, appellant testified that Steven was present both times appellant had stolen things from Ms. A.'s house, including the day the police came and the earlier day when Justin was not present. Appellant later denied being in the home on Thursday, however, stating that Steven and another boy named Antonio had been in the house "a few times" before appellant had gone there.

The court weighed the testimony carefully, including the conflicting statements of appellant and Justin. The court noted that it "found Justin to be quite credible. He appeared to be young, very unsophisticated. He was doing his very best to tell the truth and actually quite consistent with all the other testimony the Court heard." The court found particularly plausible Justin's testimony that he had not given appellant permission to be in the home on his own. "[Appellant's] testimony, on the other hand, in many regards, the Court found to be vague, hard to understand, and at points inconsistent. He maintains several times he was only there three times, but it's clear he was in there at least four times because on two of the occasions Steven was not present[, but] on two occasions when the theft[s] occurred, Steven was present[,] and that totals four. It's

when the money, and the coins, the jewelry, and the cash from the wallet w[ere] taken, that occurred on [an] occasion when Justin was not present. From the testimony, it is clear that it occurred on a Thursday, and I think that is what the evidence has demonstrated beyond a reasonable doubt.”

The juvenile court found the allegation of residential burglary on Thursday, April 26, had not been proved, but that appellant had committed the lesser offenses of misdemeanor trespass and petty theft on that occasion.³ The court also found, however, that the burglary on Monday, April 30, had been established. The court pointed out that appellant had been caught in the house on Friday and told to leave, and he knew he wasn’t supposed to be there. The court concluded appellant’s entry on Monday, April 30 did not have an “innocent motive,” noting that appellant was caught with stolen property in his pockets.

At the subsequent dispositional hearing, the court continued appellant on probation,⁴ and ordered that he should be considered for placement in a foster home or residential institution. Appellant timely appealed.

Discussion

Appellant concedes that he committed trespass and, arguably, petty theft at Ms. A.’s home on Monday, April 30. He contends, however, that the juvenile court’s implied finding that he entered the house with the intent to commit theft, and therefore was guilty of burglary, is unsupported by substantial evidence.

On appeal, we do not decide this issue de novo. Rather, we review the record to determine whether substantial evidence supports the trial court’s finding that appellant entered the house with the required felonious intent. (See *In re Cheri T.* (1999) 70

³ The court was not convinced beyond a reasonable doubt that appellant intended to commit theft when he entered the house on Thursday, April 26, based primarily on appellant’s presence in the house with Justin on the previous day.

⁴ Earlier that year, a petition had been filed against appellant, alleging residential burglary and vandalism. The charges were sustained, and appellant was placed on probation. On May 9, he admitted violating probation on April 13 by leaving his home without authorization, as alleged in a supplemental probation report. The matter had been continued for disposition when the current supplemental petition was filed.

Cal.App.4th 1400, 1404.) The existence of other, contrary evidence not believed by the trier of fact does not justify reversal under this standard. (*Ibid.*)

Appellant relies on his own testimony that he expected Justin to join them, and points out that he and Steven were discovered while they were playing video games, not while they were ransacking the house. The evidence also showed, however, that they had already collected Ms. A.'s and Justin's property, which was recovered from the nearby backpacks and appellant's own pockets.

Appellant maintains he formed the intent to steal only after he entered, ate a burrito, and played video games. That is not the conclusion drawn by the court. Wrongful intent may properly be inferred from the unlawful entry alone. (See *People v. Osegueda* (1984) 163 Cal.App.3d Supp. 25, 29-30; *People v. Walters* (1967) 249 Cal.App.2d 547, 551.) The forced entry of Ms. A.'s back door with a screwdriver also supports an inference of an intent to steal. The fact that appellant may also have intended to eat Ms. A.'s food and play Justin's video games does not immunize his entry with intent to steal. The credibility of the witnesses was a matter for the trial court. (*People v. Swanson* (1962) 204 Cal.App.2d 169, 173.) The court specifically found Justin's testimony credible, while appellant's testimony was "vague, hard to understand, and at points inconsistent." Viewing the evidence in the light most favorable to the trial court's ruling, we conclude substantial evidence supports the residential burglary finding in this case. (See *People v. Earp* (1999) 20 Cal.4th 826, 887-888; *People v. Gauze* (1975) 15 Cal.3d 709, 713.)

Next, appellant contends substantial evidence does not support the finding that appellant had also entered Ms. A.'s home on Thursday, April 26. While appellant claimed that he had only entered the house three times, he also admitted he and another boy had agreed to split some coins they had found there on another occasion. The investigating police officer also testified that appellant had told him he and Steven had taken money, jewelry, and gold coins from Ms. A.'s house on Thursday, April 26.

Appellant contends the officer's testimony in this respect reflected a misunderstanding of dates, or a mistake in memory. A review of the testimony in

context, however, provides substantial evidence to support the juvenile court's finding that appellant committed trespass on Thursday, April 26.

Finally, appellant argues the finding that he committed petty theft on Thursday, April 26, was not supported by substantial evidence, because Ms. A. was not sure as to which day the items were stolen. Appellant's admissions to the police officer, however, as described above, provide substantial support for the juvenile court's finding, and appellant's later inconsistent statements and his attempt to blame Steven for the thefts do not require a different conclusion.⁵

Disposition

The rulings of the juvenile court are affirmed.

Corrigan, J.

We concur:

McGuinness, P.J.

Pollak, J.

⁵ We also note appellant admitted to the court that he had taken jewelry from Ms. A.'s house on a day before Monday, April 30, when Justin was not there.